

## **TAXATION**

### **CHAPTER 31**

#### **TAXATION**

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#### **ARTICLE I. IN GENERAL**

**Sec. 31-01--31-15. Reserved.**

#### **ARTICLE II. FOREIGN FIRE INSURANCE COMPANY TAX**

**Sec. 31-16. Tax imposed - foreign fire insurance.**

All corporations, companies or associations not incorporated under the laws of this state, engaged in effecting fire insurance in the City, shall pay into the City Treasury the sum of two (2) percent of the amount of all premiums which during the year ending on every first day of July, shall have been received, or shall have been agreed to be paid, for any insurance effected,

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or agreed to be effected on property within the City, by or with any such corporation, company or association. Such rates, when collected, shall be set apart for the support and maintenance of the Fire Department of the city. (Code 1965, Sec. 37.01)

### **Sec. 31-17. Premium accounting - foreign fire insurance.**

Every person who acts as the agent or representative of any such corporation, company or association, shall, on or before the 15th day of July in each year, render to the City Clerk a full and true account, verified by his oath, of all premiums which, during the year ending on the first day of July preceding such report, were received by him, or any other person for him, or were agreed to be paid for, or in behalf of any such corporation, company or association on property located in the City. At the time of rendering such account, such agent shall pay to the City Treasurer the amount for which the corporation, company or association represented by him, may be chargeable by virtue of this article. (Code 1965, Sec.31.02)

### **Sec. 31-18. Collection of unpaid taxes foreign fire insurance.**

Any unpaid taxes under this article may be recovered of any such corporation, company or association, or its agent, by suit in the name and for the use of the City, as for money had and received for its use, in any court of competent jurisdiction. (Code 1965, Sec.37.03)

### **Sec. 31-19. Fees paid to firemen's pension fund.**

- (a) The City Treasurer shall set apart and appropriate foreign fire insurance companies, pursuant to chapter 24, section 11-10-1 of the Illinois Revised Statutes, to the fund for the pensioning of disabled and superannuated members of the Fire Department, and of the widows and orphans of deceased members of the Fire Department, and that the funds collected by the City Treasurer shall be paid pension fund as foreign fire insurance collected.
- (b) The City Treasurer, in the payment of foreign fire insurance company fees to the firemen's pension fund, shall follow the provisions of chapter 24, section 11-10-2 of the Illinois Revised Statutes. (Code 1965, Sec. 37.04)

### **Sec. 31-20 - 31-29. Reserved.**

## **ARTICLE III. MUNICIPAL RETAILERS' OCCUPATION TAX**

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### **Sec. 31-30. Tax imposed - municipal retailer's occupation tax.**

A tax is hereby imposed upon all persons engaged in the business of selling tangible personal property at retail in this City at the rate of one percent (1%) of the gross receipts from such sales made in the course of such business while this chapter is in effect, in accordance with the provisions of Chapter 24, Section 8--11 of the Illinois Revised Statutes. (Ord. No. 69-19, Sec. 1, 8-4-69)

### **Sec. 31-31. Filing of monthly report - municipal retailers.**

- (a) Every such person engaged in such business in the City shall file on or before the last day of each calendar month, the report to the State Department of Revenue required by section 3 of "An Act in Relation to a Tax upon Persons Engaged in the Business of Selling Tangible Property to Purchasers for Use or Consumption" approved June 28, 1933, as amended.
- (b) At the time such report is filed, there shall be paid to the State Department of Revenue the amount of tax hereby imposed on account of the receipts from sales of tangible personal property during the preceding month. (Ord. No. 69-19, Sec. 3, 8-4-69)

State law reference - Retailer's Occupation Tax Act, Ill. Rev. Stat. Ch. 120, Sec. 440 et seq.

### **Sec. 31-32 - 31-42. Reserved.**

## **ARTICLE IV. MUNICIPAL USE TAX**

\*Editor' note - Ord. No. 75-15, enacted Feb. 18, 1975, did amend this Code, hence codification of Secs. 1 and 2 herein as Art. IV, Secs. 31-43, 31-44, was at the discretion of the editors.

### **Sec. 31-43. Tax imposed; amount - municipal use tax.**

A tax is hereby imposed in accordance with the provisions of Section 8-11-6 of the Illinois Municipal Code upon the privilege of using in the City of Kankakee any item of tangible personal property which is purchased outside Illinois at retail from a retailer, and which is titled or registered with an agency of Illinois Government. The tax shall be at a rate of one percent (1%) of the selling price of such tangible property with selling price to have the meaning as defined in the Use Tax Act, approved July 14, 1955. (Ord. No. 75-15, Sec. 1, 2-18-75)

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### **Sec. 31-44. Collection municipal use tax.**

Such tax shall be collected by the Illinois Department of Revenue for all municipalities imposing the tax and shall be paid before the title or certificate of registration for the personal property is issued. (Ord. No. 75-15, Sec. 2, 2-18-75)

### **Sec. 31-45 - 31-54. Reserved.**

## **ARTICLE V. MUNICIPAL UTILITY TAX**

\*Editor's note - Ord. No. 81-44, adopted August 3, 1981, amended the Code, but did not specify the manner of inclusion. At the editor's discretion, therefore, Secs. 1 - 8 of Ord.81-11 have been codified as Art. V. Secs. 31-55 - 31-62.

### **Sec. 31-55. Definitions - Municipal utility tax.**

For the purposes of this article, the following definitions shall apply:

"Gross receipts" means the consideration received for the transmission of messages, or for distributing, supplying, or furnishing or selling gas, consumption and not for resale, as the case may be; and for all services rendered in connection therewith in money or otherwise, including cash, credit, services and property of every kind and material and or all services rendered therewith; and shall be determined without any deduction on account of the cost of transmitting said messages, without any deduction on account of the cost of the service, product or commodity supplied, the cost of materials used, labor or service cost, or any other expenses whatsoever.

"Transmitting messages" in addition to the usual and popular meaning of person to person communication, shall include the furnishing, for a consideration, of services of facilities (whether owned or leased), or both, to persons in connection with the transmission of messages where such persons do not in turn receive any consideration in connection therewith, but shall not include such furnishing of services or facilities to persons for the transmission of messages to the extent that any such services or facilities for the transmission of messages are furnished for a consideration by such persons or to other persons, for the transmission of messages.

"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, municipal corporation or political subdivision of this state, or

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a receiver, trustee, conservator or other representative appointed by any court. (Ord. No. 81-44, Sec. 1, 8-3-81).

### **Sec. 31-56. Tax imposed - municipal utility tax.**

A tax is imposed on all persons engaged in the following occupations or privileges:

1. Persons engaged in the business of transmitting messages by means of electricity, at the rate of five (5) per cent of gross receipts from such business originating within the corporate limits of the City of Kankakee.
2. Persons engaged in the business of distributing, supplying, furnishing, or selling gas for the use or consumption within the corporate limits of the City and not for resale, at the rate of five (5) percent of the gross receipts therefrom.
3. Persons engaged in the business of distributing, supplying, furnishing, or selling electricity for the use or consumption within the corporate limits of the City, and not for resale, shall be taxed at the following rate per kilowatts used, to wit:

<u>Strata</u> <u>By kilowatt hours</u>	<u>Tax Rate</u> <u>(including administrative fee)</u>
First 2,000 kwh	.00579
Next 48,000 kwh	.00381
Next 50,000 kwh	.00357
Next 400,000 kwh	.00324
Next 500,000 kwh	.00300
Next 2,000,000 kwh	.00299
Next 2,000,000 kwh	.00298
Next 5,000,000 kwh	.00227
Next 10,000,000 kwh	.00165
Greater than 20,000,000 kwh	.00103

(Ord. No. 99-27, Sec. 1, 4-5-99) (Repealed by Ord. No. 99-56, 6-21-99)

The tax imposed under this section 31-56(3) shall not apply with respect to gross receipts pertaining to bills for the distribution, supply, furnishing or sale of

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electricity where the use or, consumption of the electricity is subject to the tax imposed under Section 31-64 of the City Code. (Ord. No. 99-57, Sec. 1,6-21-99).

4. Persons engaged in the business of distributing, supplying, furnishing, or selling water for use or consumption within the corporate limits of the City, and not for resale, at the rate of five (5) per cent of the gross receipts therefrom. (Ord. No. 81-44, Sec. 1, 8-3-81); (Section 31-56-(1) of the Municipal Code of the City of Kankakee is hereby repealed and revoked by Ord. 94-39, 6-20-94).

### **Sec. 31-57. Exemptions Municipal utility tax.**

No tax is imposed by this article with respect to any transaction in interstate commerce or otherwise to the extent to which such business may not, under the constitution and statutes of the United States, be made subject to taxation by this state or any political subdivision thereof: nor shall and persons engaged in the business of distributing, supplying, furnishing or selling gas, water, or electricity, or engaged in the business of transmitting messages, be subject to taxation under the provisions of this article for such transactions as are or may become subject to taxation under the provisions of the "Municipal Occupation Tax Act" authorized by Section 8-11-1 of Chapter 24 of the Illinois Revised Statutes, 1979. (Ord. No. 81-44, Sec.2, 8-3-81)

### **Sec. 31-58. Tax in addition to compensation for use of public ways and places.**

Such tax shall be in addition to the payment of money or value of products or services furnished to this municipality by the taxpayer as compensation for the use of its streets, alleys, or other public places, or installation and maintenance therein, there on, or there under of poles, wires, pipes, or other equipment used in the operation of the taxpayer's business. (Ord. No. 81-44, Sec.3, 8-3-81)

### **Sec. 31-59. Filing of return; payment - municipal utility tax.**

- (a) On or before the last day of every month after the effective date of this Amendment to Ordinance, each taxpayer shall make a return to the City Clerk for the month prior to the month on which this return is due, stating:
  - (1) His name;
  - (2) His principal place of business;

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- (3) His gross receipts during those months upon the basis of which the tax is imposed;
  - (4) Amount of tax;
  - (5) Such other reasonable and related information as the corporate authorities may require.
- (b) The taxpayer making the return herein provided for shall, at the time of making such return, pay to the City Treasurer the amount of tax herein imposed; provided that in connection with any return the taxpayer may, if he so elects, report and pay an amount based upon his total billings of business subject to the tax during the period for which the return is made (exclusive of any amounts previously billed) with prompt adjustments of later payments based upon any differences between such billings and the taxable gross receipts. (Ord. No 87-1, Sec.6, 2-2-87)

### **Sec. 31-60. Credit for erroneous payment - municipal utility tax.**

If it shall appear that an amount of tax has been paid which was not due under the provisions of this article, whether as the result of a mistake of fact or an error of law, then such amount shall be credited against any tax due, or to become due, under this article from the taxpayer who made the erroneous payment; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefor shall be so (Ord. No.81-44, Sec. 7,8-3-81)

If the taxpayer under this Section 31-56(3) is unable to use a credit authorized by this section solely because the tax imposed by this chapter has been replaced by the tax imposed under Section 31-64 then the taxpayer may apply such credit against any tax due under 31-64. (Ord. No. 99-57, Sec.2, 6-21-99). (Ord. No. 99-57, Sec. 1, 6-21-99).

### **Sec. 31-61. Effective date - municipal utility tax.**

This article shall take effect after publication and the tax provided for herein shall be based on the gross receipts, as herein defined, actually paid to the taxpayer for services, billed on or after the 1st day of September, 1981. (Ord. No. 81-44, Sec. 5, 8-3-81)

### **Sec. 31-62. Penalty for violation of municipal utility tax.**

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Any taxpayer who fails to make a return, or who makes a fraudulent return, or who willfully violate any other provision of this article is guilty of a misdemeanor and upon conviction thereof shall be fined not less than one hundred dollars (\$100.00) nor more than five hundred dollars (\$500.00) and in addition shall be liable in a civil action for the amount of tax due. (Ord. No. 81-44, Sec. 8, 8-3-81)

### **Sec. 31-63. Definitions.**

As used in this chapter, unless the context otherwise requires:

"City" means the City of Kankakee, Illinois

"Person" means any natural, individual, firm, trust, estate, partnership, association, joint stock company, joint adventure, corporation, limited liability company, municipal corporation, the State or any of its political subdivisions, any State University created by statute, or a receiver, trustee, conservator or other representative appointed by order of any court.

"Person Maintaining a place of business in this State" means any person having or maintaining within this State, directly or by a subsidiary or other affiliate, an office, generation facility, distribution facility, transmission facility, sales office or other place of business, or any employee, agent, or other representative operating within this State under the authority of the person or its subsidiary or other affiliate, irrespective of whether such place of business or agent or other representative is located in this State permanently or temporarily, or whether such person, subsidiary or other affiliate is licensed or qualified to do business in this State.

"Purchaser at retail" means any acquisition of electricity by a purchaser for purposes of use or consumption, and not for resale, but shall not include the use of electricity by a public utility, as defined in Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2), directly in the generation, production, transmission, delivery or sale of electricity.

"Purchaser" means any person who uses or consumes, within the corporate limits of the City, electricity acquired in a purchase at retail.

"Tax collector" means the person delivering electricity to the purchaser.

### **Sec. 31-64. Tax imposed.**

Pursuant to Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2) and any and all other applicable authority, a tax is imposed upon the privilege of using or consuming electricity



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acquired in a purchase at retail and used or consumed within the corporate limits of the City at the following rates, calculated on a monthly basis for each purchaser:

- (i) For the first 2,000 kilowatt-hours used or consumed in a month; 0.560 cents per kilowatt-hour;
- (ii) For the next 48,000 kilowatt-hours used or consumed in a month; 0.367 cents per kilowatt-hour.
- (iii) For the next 50,000 kilowatt-hours used or consumed in a month; 0.331 cents per kilowatt-hour.
- (iv) For the next 400,000 kilowatt-hours used or consumed in a month; 0.321 cents per kilowatt-hour.
- (v) For the next 500,000 kilowatt-hours used or consumed in a month; 0.312 cents per kilowatt-hour.
- (vi) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.294 cents per kilowatt-hour.
- (vii) For the next 2,000,000 kilowatt-hours used or consumed in a month; 0.289 cents per kilowatt-hour;
- (viii) For the next 5,000,000 kilowatt-hours used or consumed in a month; 0.285 cents per kilowatt-hour;
- (ix) For the next 10,000,000 kilowatt-hours used or consumed in a month; 0.280 cents per kilowatt-hour; and
- (x) For all electricity used or consumed in excess of 20,000,000 kilowatt-hours in a month; 0.275 cents per kilowatt-hour.

The tax is in addition to all taxes, fees and other revenue measures imposed by the City, the State of Illinois or any other political subdivision of the State.

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Notwithstanding any other provision of this chapter, the tax shall not be imposed if and to the extent that imposition or collection of the tax would violate the Constitution or statutes of the United States or the Constitution of the State of Illinois.

The tax shall be imposed with respect to the use or consumption of electricity by residential customers beginning with the first bill issued on or after August 1, 1999; and with respect to the use or consumption of electricity by nonresidential customers beginning with the first bill issued to such customers for delivery services in accordance with Section 16-104 of the Public Utilities Act (220 ILCS 5/16-104), or the first bill issued to such customers on or after January 1, 2001, whichever issuance occurs sooner.

### **Sec. 31-65      Collection of Taxes.**

Subject to the provisions of this Code regarding the delivery of electricity to resellers, the tax imposed under this chapter shall be collected from purchasers by the person maintaining a place of business in this State who delivers electricity to such purchasers. This tax shall constitute a debt of the purchaser to the person who delivers the electricity to the purchaser and is recoverable at the same time and in the same manner as the original charge for delivering the electricity.

Any tax required to be collected by this chapter, and any tax in fact collected, constitutes a debt owed to the City by the person delivering the electricity, provided, that the person delivering electricity shall be allowed credit for such tax related to deliveries of electricity the charges for which are written off as uncollectible, and provided further, that if such charges are thereafter collected, the delivering supplier shall be obligated to remit such tax.

Persons delivering electricity shall collect the tax from the purchaser by adding such tax to the gross charge for delivering the electricity. Persons delivering electricity shall also be authorized to add to such gross charge an amount equal to 3% of the tax they collect to reimburse them for their expenses incurred in keeping records, billing customers, preparing and filing returns, remitting the tax and supplying data to the City upon request. For purposes of this chapter, any partial payment of a billed amount not specifically identified by the purchaser shall be deemed to be for the delivery of electricity,

### **Sec. 31-66.      Tax remittance and return.**

Every tax collector shall on a monthly basis file a return in a form prescribed by the Comptroller of the City. The return and accompanying remittance shall be due on or before the last day of

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the month following the month during which the tax is collected or is required to be collected under Sections 31-64 and 31-65 hereof.

If the person delivering electricity fails to collect the tax from the purchaser or is excused from collecting the tax under Sections 31-64 and 31-65 hereof, then the purchaser shall file a return in a form prescribed by the Comptroller of the City and pay the tax directly to the Comptroller of the City on or before the last day of the month following the month during which the electricity is used or consumed.

### **Sec. 31-67.     Resales.**

Electricity that is delivered to a person in the City shall be considered to be for use and consumption by that person unless the person receiving the electricity has an active resale number issued by the Comptroller of the City and furnishes that number to the person who delivers the electricity, and certifies to that person that the sale is either entirely or partially nontaxable as a sale for resale.

If a person who receives electricity in the City claims to be an authorized reseller of electricity, that person shall apply to the Comptroller of the City for a resale number. The applicant shall state facts showing why it is not liable for the tax imposed by this chapter on any purchases of electricity and shall furnish such additional information as the Comptroller of the City may reasonably require.

Upon approval of the application the Comptroller of the City shall assign a resale number to the applicant and shall certify the number to the applicant.

The Comptroller of the City may cancel the resale number of any person if the person fails to pay any tax payable under this chapter for electricity used or consumed by the person, or if the number (1) was obtained through misrepresentation, or (2) is no longer necessary because the person has discontinued making resales.

- (1) If a reseller has acquired electricity partly for use or consumption and partly for resale, the reseller shall pay the tax imposed by this chapter directly to the Comptroller of the City pursuant to subsection B of Section 31-66 hereof on the amount of electricity that the reseller uses or consumes, and shall collect the tax pursuant to Sections 31-64 and 31-65 hereof and remit the tax pursuant to subsection A of 31-66 hereof on the amount of electricity delivered by the reseller to a purchaser.

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- (2) Any person who delivers electricity to a rescuer having an active resale number and complying with all other conditions of the section shall be excused from collecting and remitting the tax on any portion of the electricity delivered to the reseller, provided that the person reports to the Comptroller of the City the total amount of electricity delivered to the reseller, and such other information that the Comptroller of the City may reasonably require.

### **Sec. 31-68. Books and Record.**

Every tax collector, and every taxpayer required to pay the tax imposed by this Ordinance, shall keep accurate books and records of its business or activity, including contemporaneous books and records denoting the transactions that gave rise, or may have given rise, to any tax liability under this chapter. The books and records shall be subject to and available for inspection at all times during business hours of the day.

### **Sec. 31-69. Credits and refunds.**

Notwithstanding any other provision of this Ordinance in order to permit sound fiscal planning and budgeting by the City, no person shall be entitled to a refund of, or credit for, a tax imposed under this chapter unless the person files a claim for refund or credit within one year after the date on which the tax was paid or remitted to the Comptroller of the City. (Ord. No. 99-57, Sec. 1. .6-21-99)

## **ARTICLE Section 31-70 Municipal Gas Use Tax**

### **1. Short Title**

The tax imposed by this Article shall be known as the "Municipal Gas Use Tax" and is imposed in addition to all other taxes imposed by the City of Kankakee, the State of Illinois, or any other Municipal Corporation or political subdivision thereof.

### **2. Definitions**

For the purpose of this Article, the following definitions shall apply:

- a. "Person" means any individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal corporation or political subdivision of this state, or a receiver, trustee, conservator or other representative appointed by order of any court.

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- b. "Public Utility" means a public utility as defined in Section 3-105 of the Public Utilities Act.
  - c. "Public Utilities Act" means the Public Utilities Act as amended, (220 ILCS 5/1101 et seq.).
  - d. "Retail Purchaser" means any Person who purchases gas in a Sale at Retail.
  - e. "Sale at Retail" means any sale of gas by a retailer to a Person for use or consumption, and not for resale. For this purpose, the term "retailer" means any Person engaged in the business of distributing, supplying, furnishing or selling gas.
3. Use Tax
- a. Except as otherwise provided by this Article, a tax is imposed on the privilege of using or consuming gas in the City that is purchased in Sale at Retail at the rate of four and on-half cents (\$.045) per therm.
  - b. The ultimate incidence of and liability for payment of the tax is on the Retail Purchaser, and nothing in this Article shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.
  - c. The Retail Purchaser shall pay the tax, measured by therms of gas delivered to the Retail Purchaser's premises, to the Public Utility designated to collect the tax pursuant to Section 4 of this Article on or before the payment due date of the Public Utility's bill first reflecting the tax, or directly to the City Treasurer on or before the fifteenth day of the second month following the month in which the gas is delivered to the Retail Purchaser if no Public Utility has been designated to collect the tax pursuant to Section 4 or if the gas is delivered by a person other than a Public Utility so designated.
  - d. Nothing in this article shall be construed to impose a tax upon any person, business or activity which, under the constitutions of the United States or State of Illinois, may not be made the subject of taxation by the City.
  - e. A Person who purchases gas for resale and therefore does not pay the tax imposed by this Article with respect to the use or consumption of the gas, but who later uses or consumes part or all of the gas, shall pay the tax directly to the

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City Treasurer on or before the fifteenth day of the second month following the month in which the gas is used or consumed.

- f. The tax shall apply to gas for which the delivery to the Retail Purchaser is billed by a Public Utility on or after August 1, 2009.
  - g. If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as a result of a mistake of fact or an error of law, then such amount shall be (i) credited against any tax due, or to become due, under this Article from the taxpayer who made the erroneous payment or (ii) subject to a refund if no such tax is due or to become due; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited or refunded.
  - h. No action to recover any amount of the tax due under the provisions of this Article shall be commenced more than three (3) years after the sue date of such amount.
  - i. To prevent multiple taxation, the use of gas in the City by a Retail Purchaser shall be exempt from the tax imposed by this Article if the gross receipts from the Sale at Retail of such gas to the Retail Purchaser are properly subject to a tax imposed upon the seller of such gas pursuant to the City's municipal utility tax, as amended from time to time in Article V §§31-55 through 31-69, authorized pursuant to Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2).]
4. Collection of tax by Public Utility
- The Mayor, City Treasurer, City Manager and City Finance Director are each authorized to enter into a contract for collection of tax imposed by this Article with any Public Utility providing gas service in the City. The contract shall include and substantially conform with the following provisions:
- a. the Public Utility will collect the tax from Retail Purchasers as an independent contract;
  - b. the Public Utility will remit collected taxes to the City Treasurer no more often than once each month
  - c. the Public Utility will be entitled to withhold from tax collections a service fee equal to 3% of the amounts collected and timely remitted to the City Treasurer;

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- d. the Public Utility shall not be responsible to the City for any tax not actually collected from a Retail Purchaser; and
  - e. such additional terms as the parties may agree upon.
5. Books and records.

Every taxpayer shall keep accurate books and records, including original source documents and books of entry, denoting the activities or transactions that gave rise, or may have given rise to any tax liability or exemption under this Article. All such books and records shall, at all times during business hours, be subject to and available for inspection by the City. (Ord 09-39) (Ord 09-51)

## **ARTICLE VI. AUTOMOBILE RENTING TAX**

### **DIVISION 1 GENERALLY**

\*Cross reference--Traffic and vehicles, Ch.32; Vehicles for hire, Ch.33.

**Sec. 31-71--31-74. Reserved.**

### **DIVISION 2. USE TAX**

\*Editor's note - Ord. No. 82-8, enacted April 19, 1982, did not specifically amend the Code; hence, inclusion of Secs. 1 - 4 as Art. VI, Div. 2, Sec. 31-75--31-77, has been at the editor's discretion. It should be noted that Secs. 5 and 6 of said ordinance have been omitted. Section 5 directs the City Clerk to transmit a certified copy of this ordinance to the State Department of Revenue no later than five days after its effective date; and Sec. 6 provides that said ordinance be published within ten days of its enactment as provided by state law and shall be effective the first day of the month next following the expiration of the publication period. Section 6 also provides for certified proof of publication to be forwarded to the State Department of Revenue along with a certified copy of this ordinance.

**Sec. 31-75. Imposed - use tax for rented autos.**

A tax is hereby imposed upon the privilege of using in this City an automobile which is rented from a renter outside Illinois and which is titled or registered with an agency of this state's

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government in this City at the rate of one percent of the rental price of such automobile while this division is in effect, in accordance with the provisions of Section 8-11-8 of the Illinois Municipal Code (Ord No. 82-8, Sec. 1, 4-19-82)

### **Sec. 31-76. Report required; payment of tax - rented autos.**

- (a) Every such person engaged in such business in the City shall file on or before the last day of each calendar month the report to the State Department of Revenue required by Sections two and three of "An Act in Relation to a Tax upon Persons Engaged in the Business of Selling Tangible Personal Property to Purchasers for Use or Consumption approval June 29, 1933", as amended.
- (b) At the time such report is filed, there shall be paid to the state department of revenue the amount of tax hereby imposed on account of the renting of automobiles during the preceding month. (Ord. No 82-8, Sec. 3, 4-19-82))

### **Sec. 31-77. Collection - use tax - rented autos.**

The tax provided for in this division shall be collected from the persons whose Illinois address for titling or registration purposes is given as being in this City. (Ord. No. 82-8, Sec. 3, 4-19-82)

### **Sec. 31-78--31-82. Reserved.**

## **DIVISION 3. OCCUPATION TAX**

\*Editor's note - Being not specifically amendatory of the Code, the provisions of Ord. No. 82-9, Secs. 1 - 3, enacted April 19, 1982, have been codified herein as Art. VI, Div. 3, Secs. 3183 - 31-85, at the editor's discretion. Section 4, which directed the city clerk to transmit a copy of this ordinance to the State Department of Revenue not later than five days after its effective date, and Sec. 5, which provided for the publication of this ordinance within ten days of its effective date in accordance with state law, its effective date being the first day of the month next following the expiration of the publication period, and providing for a certified proof of publication to be forwarded along with the certified copy of this ordinance to the State Department of Revenue, have been omitted at the editor's discretion.

### **Sec. 31-83. Tax imposed - occupation.**



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A tax is hereby imposed upon all persons engaged in the business of renting automobiles in this City at the rate of one percent of the gross receipts from such sales made in the course of such business while this division is in effect, in accordance with the provisions of Section 8-11-7 of the Illinois Municipal Code. (Ord No. 82-9, Sec. 1, 4-19-82)

### **Sec. 31-84. Report required - occupation tax.**

Every such person engaged in such business in the City shall file on or before the last day of each calendar month, the report to the State Department of Revenue required by Sections two and three of "An Act in Relation to a Tax upon Persons Engaged in the Business of Selling Tangible Personal Property to Purchasers for Use or Consumption, approved, June 29, 1933", as amended (Ord. No. 82-9, Sec. 3, 4-19-82)

### **Sec. 31-85. Payment - occupation tax.**

At the time such report is filed, there shall be paid to the State Department of Revenue the amount of tax hereby imposed on account of the renting of automobiles during the preceding month (Ord. No 82-9, Sec. 3, 4-19-82)

## **DIVISION 4. NATURAL GAS TAX**

### **Sec. 31-86. Definitions - natural gas tax.**

City: The term "City" shall mean the City of Kankakee, Illinois.

Department: The term "Department" or "Treasurer" shall mean the "Treasurer" of the City of Kankakee.

Gross Price: The term "Gross Price" shall mean the consideration paid by a person for natural gas supplied, furnished or sold to such person for use or consumption, and not for resale, valued in money whether received in money or otherwise, and shall be determined without any deduction on account of the cost of materials used, labor or service costs, or any other expense whatsoever; except that gross price shall not include any consideration paid to a person subject to tax on such consideration pursuant to an ordinance passed by the President and Board of Trustees under the authority of Section 8-11-2 of the Illinois Municipal Code; and also shall exclude any separately stated and optional charges which are not part of the consideration paid for such gas including separately stated optional charges for transportation or storage of such gas.

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Use: The term "use" shall mean the exercise by any person of any right to or power over natural gas incident to the ownership of such gas; provided, however, that the temporary storage of natural gas within the City which will be consumed solely outside the City shall not be considered a taxable use, when such is proven by the user.

Director: The term "Director" or "Treasurer" shall mean the "Treasurer of the City of Kankakee."

Person: The term "person" shall mean any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, trustee, guardian, any representative appointed by a court, any public, municipal or governmental corporation or any other entity recognized in law.

Therms purchased: The term "therms purchased" or any similar term shall mean the therms of natural gas supplied, furnished or sold to a person for use or consumption and not for resale by that person; except it does not include therms of natural gas purchased from a person subject to tax on the gross receipts from the sale of such gas pursuant to an ordinance passed by the President and Board of Trustees under the authority of Section 8-11-2 of the Illinois Municipal Code.

In the Article unless the context otherwise requires, words in the singular number include the plural, and in the plural include the singular; words of the masculine gender include the feminine and the neuter; and when the sense so indicates, words of the neuter gender may refer to any gender.

### **Sec. 31-87. Natural Gas Tax imposed.**

A tax is hereby imposed upon the privilege of using or consuming natural gas within the City of Kankakee at the rate of 5 % of the gross price paid for such gas. The ultimate liability and legal incidence of this tax shall be on the user or consumer of the gas. However, to prevent actual multi-state and multi-city taxation of the privilege that is subject to taxation under this Section, upon proof that a tax was paid in another state or locality on the purchase, use or consumption of such gas, a credit shall be allowed against the tax imposed in this Section to the extent of the amount of such tax properly due and paid in such other state and not already allowed as a credit against any other state or local tax imposed in this State. The tax imposed herein is not imposed on any act or privilege to the extent such act or privilege may not, under the Constitution and statutes of the United States, be made the subject of taxation by the State.

## **TAXATION**

The tax imposed hereunder shall be paid by the person using or consuming the gas and remitted by such person to the Treasurer pursuant to Section 31-5 hereof, such person required to pay this tax shall be deemed a "taxpayer" to the City.

Any tax herein imposed is in addition to any other taxes authorized by law, except as provided herein.

The taxpayer shall pay this tax on a monthly basis, with the tax due on gas used or consumed within a month by the last day of the following month. A remittance return shall accompany each monthly payment. The format of such remittance return shall be prescribed by the Treasurer and such return shall include the gross price paid for such gas and the number of therms used or consumed within that month and any other information the Treasurer deems necessary. The remittance returns shall be filed and signed by the taxpayer. The Treasurer may allow a taxpayer to pay this tax on an annual basis, if the taxpayer average monthly liability is less than \$20, with the tax due for the calendar year by the last day of January of the following year. A remittance form prescribed by the Treasurer with requirements similar to the monthly remittance return referred to above, shall be signed and filed by the Taxpayer with his annual payment.

### **Sec. 31-88.                   Penalty for not paying natural gas tax.**

Any tax not paid when due shall bear interest of 2% per month, or fraction thereof, until the tax is paid.

In addition to any interest charged, any tax not paid when due shall subject the Taxpayer, failing to pay such to a 10% late payment penalty, unless a late filing penalty is due as provided in subsection C below. This penalty shall be calculated upon the amount of tax underpaid.

In addition to any interest charge, any remittance return not filed when due shall subject the taxpayer failing to file to a 10% late filing penalty calculated upon the total tax liability due for such filing period.

Any payment or return not physically received by the Treasurer by the due date shall be considered late.

All payments received shall first be applied to penalty due, then interest due and finally to tax due for the period the payment is made for.

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The taxpayer shall be required to pay all tax, interest and penalty due from him, except that if the Treasurer finds that any late payment or late filing was due to be reasonable cause, the penalty for such shall not apply.

### **Sec 31-89. Record keeping - natural gas tax.**

Every person subject to the tax imposed herein shall keep accurate and complete books and records of his purchases and uses of natural gas, which will include any and all source documents and other pertinent papers and documents. All such books and records which are required to be kept by this Article shall be kept in the English language and shall, at all times during business hours of the day, be subject to inspection by the Treasurer or its duly authorized agents and employees.

It shall be presumed that every use or consumption of natural gas in this City is subject to tax under this Article until the contrary is established. The burden of proving that a use or consumption of natural gas is not taxable hereunder shall be upon the taxpayer.

### **Sec. 31-90. Duties of Treasurer: natural gas tax.**

The Treasurer is hereby empowered to adopt, promulgate, and to enforce rules and regulations relating to any matter or thing pertaining to the administration and enforcement of the provisions of this Article, including provisions for the re-examination, correction and amendment of all returns. The Treasurer, or any agent or employee designated in writing by him is hereby authorized to examine the books and records of any taxpayer during regular business hours, in order to verify the accuracy of any return made, or if no return was made to ascertain the tax imposed by this Article and also may hold investigation and issue subpoenas, if necessary, to any person in order to accomplish these tasks.

If it shall appear to the Treasurer that any person has violated any provision of this Article or any rule or regulation promulgated hereunder, or if the amount of any tax payment is incorrect in that it does not include all taxes payable for such calendar month or period, or if the Treasurer shall find that the collection of any taxes which have accrued but are not yet due will be jeopardized by delay, and declares said taxes to be immediately due and payable, or if it shall appear to the Treasurer that he has made any final assessment which did not include taxes payable for the periods involved, or if it appears to the Treasurer that any person has, by reason of any act or omission or by operation of law, become liable for the payment of any taxes, interest or penalties not originally incurred by him, the Treasurer may in any of the above events determine and assess the amount of such taxes or deficiency, as the case may be together with the interest and

## **TAXATION**

penalties due and unpaid, and immediately serve notice upon such person of such determination and assessment and make a demand for payment of the tax together with interest and penalties thereon. If the person incurring any such liability has died, such assessment may at the discretion of the Treasurer be made against his personal representative. Such determination and assessment by the Director shall be final at the expiration of 20 days from the date of the service of such written notice thereof and demand for payment, unless such person shall have filed with the Treasurer a written protest and a petition for a hearing, specifying its objections thereto. Upon the receipt of such petition with the 20 days allowed, the Treasurer shall fix the time and place for a hearing and shall notify the petitioner thereof. The Treasurer may amend his determination and assessment at anytime before it becomes final. In the event of such amendment the person affected shall be given notice thereof and an opportunity to be heard in connection therewith. At any hearing held as herein provided, the determination and assessment that has been made by the Treasurer shall be prim facie correct and the burden shall be upon the protesting person to prove that it is incorrect. Upon the conclusion of such hearing a decision shall be made by the Treasurer either canceling, increasing, modifying or affirming such determination and assessment and notice thereof given to the petitioner. Such notice shall contain a statement by the Treasurer of the cost of the certification of the record computed at the rate of 10 cents per 100 words, which cost shall be charged to the petitioner if the determination or assessment is affirmed. The record shall consist of the notices and demands caused to be served by the Treasurer, the original determination and assessment of the Treasurer, the written protest and petition for hearing, the testimony introduced at such hearing, the exhibits produced at such hearing, or certified copies thereof, the decision of the Treasurer and such other documents in the nature of pleading filed in the proceeding.

Whenever any person shall fail to pay any tax as herein provided, the City's Attorney shall, upon the request of the Department, bring or cause to be brought an action to enforce the payment of said tax on behalf of the City in any court of competent jurisdiction.

If the Mayor, after a hearing held by or for him, shall find that any person has willfully evaded payment of the tax imposed by this Article, he may suspend or revoke all City licenses held by such tax evader. Said person shall have an opportunity to be heard at such hearing to be held not less than 7 days after notice is given to him of the time and place of hearing to be held, addressed to him at his last known place of business. Pending notice, hearing and finding, any license issued by the City possessed by said person may be temporarily suspended. Any suspension or revocation of any license shall not release or discharge said person from his civil liability for the payment or collection and remittance of the tax, nor from prosecution for such offense.

Whenever it appears that an amount of tax, interest or penalty has been paid in error to the Treasurer by the taxpayer, whether such amount be paid through a mistake of fact or an error of

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law other than an error resulting from the tax, any of its provisions or its application being declared invalid or unconstitutional, not later than three years from the date upon which such payment was made, such taxpayer may file a claim for credit or refund with the Treasurer on forms provided by said Treasurer for that purpose. No credit or refund shall be allowed for any amount paid by such taxpayer unless it appears that he bore the burden of such amount and did not shift the burden to another person.

Any credit or refund that is allowed under this Section shall bear interest at the rate of one-half of one percent (1/2) per month, or any fraction thereof, from the date when the erroneous payment for which credit or refund is being allowed was made to the Treasurer, until a credit memorandum is issued or a refund is paid.

A claim for credit or refund shall be considered to have been filed with the Treasurer on the date upon which it is physically received by the Treasurer, and receipt of any claim or refund filed under this Section shall be acknowledged by the Treasurer or any designated person on his behalf, said receipt to describe the claim in sufficient detail as to identify it, and to state the date upon which the claim was received by the Treasurer.

As soon as practicable after a claim for credit or refund is filed, the Treasurer or his designate, shall examine and determine the amount of credit or refund due, if any, and shall issue a Notice of Tentative Determination of Claim and notify the claimant of such determination. If the claimant disagrees with the determination, he shall file a protest and challenge thereto within 20 days allowed, the Treasurer, or his designate, shall fix the time and place for a hearing thereon, filing notice to the claimant thereof, not less than 7 days prior thereto. At any hearing held as herein provided, the Tentative Determination of Claim shall be prima facie correct and the burden shall be upon the claimant to provide that it is incorrect. Upon the conclusion of the hearing, a decision shall be made by the Treasurer and notice hereof given to the claimant. In the event no protest or challenge to the Tentative Determination of Claim is filed within the twenty (20) day period hereinabove set forth, said notice shall thereafter become and operate as a final determination.

The Treasurer may in his discretion issue a letter of credit to a claimant who may be able to use said credit in the foreseeable future, or a refund certificate in lieu of a credit memorandum on application by a person who cannot use said credit, or sell or assign the same. Refund certificates shall be numbered serially as they are issued and shall be paid in the order of their issuance from funds that are appropriated to the Department for that purpose.

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Whenever notice is required by this Article to be sent by the Treasurer, Director or the Mayor, such notice may be given by United States registered or certified mail, addressed to the person concerned at his last known address, and proof of such mailing shall be sufficient for the purposes of this Article. Notice of any hearing provided for by this Article shall be so given not less than 7 days prior to the day fixed for the hearing. Following the initial contact of person represented by an attorney, the Treasurer shall not contact the person concerned but shall only contact the attorney representing the person concerned.

All hearing provided for in this Article shall be at the Treasurer's office.

Any officer or employee of any corporate taxpayer who has the control, supervision or responsibility of filing returns and making payment of the amount of tax herein imposed and who willfully fails to file such return or to make such payment to the Treasurer shall be personally liable for such amounts, including interest and penalties thereon, in the event that after proper proceedings for the collection of such amounts, as provided in this Article such corporation is unable to pay such amounts to the Department; and the personal liability of such officer or employee as provided herein shall survive the dissolution of the corporation.

All proceeds resulting from the imposition of this tax including interest and penalties shall be deposited in the Corporate fund of the City.

Any person found guilty of violating, disobeying, neglecting, or refusing to comply with any of the provisions of this Article except when otherwise specifically provided, upon conviction thereof shall be punished by a fine of not less than \$100.00 nor more than \$1,000.00 for the first offense and not less than \$500.00 nor more than \$5,000.00 for the second and each subsequent offense in any 180-day period, provided, however, that all actions seeking the imposition of fines only shall be filed as quasi-criminal actions subject to the provisions of the Illinois Code of Civil Procedure (Ill. Rev. Stat. 1983, Ch. 110 par. 1-101 et seq.). A person who commits repeated offenses in excess of three within any 180-day period may also be punished as committing a misdemeanor by incarceration in the County Jail for a term not to exceed six months under the procedures (Ill. Rev. Stat. 1983, Ch. 38, par. 100-1 et seq.) in a separate proceeding. A separate and distinct offense shall be regarded as committed each day upon which said person shall continue any such violation, or permit any such violation to exist, after notification thereof.

If any provision of this Article or application thereof to any person or circumstance is held unconstitutional or otherwise invalid, such invalidity shall not affect other provisions or applications of this Article which can be given effect without the invalid application or provision, and to this end each such invalid provision or invalid application of this Article is

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severable, unless otherwise provided by this Article. In particular, but without limitation, each provision creating an exception to or an exemption or exclusion from the imposition of the tax is severable. It is hereby declared to be the legislative intent of the City Council that this Article would have been adopted had any such unconstitutional or otherwise invalid provision or application not been included. (Ord. No. 90-11, Sec.1, 4-16-90).

### **ARTICLE VII. MUNICIPAL TELECOMMUNICATIONS TAX. ORDINANCE NUMBER 94-39**

#### **Sec. 31-91. Definitions - telecommunications tax.**

The following definitions shall apply to the following terms when used in this Article:

"Amount Paid" refers to the amount charged to the taxpayer's service address located in the City regardless of where such amount is billed or paid.

"Gross Charge" means the amount paid for the act or privilege of originating or receiving telecommunications in the City and for all services rendered in connection therewith, valued in money or otherwise, including cash, credits, services and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of materials used, labor or service costs or any other expense whatsoever. If credit is extended, the amount thereof shall be included only as and when paid. "Gross charge" shall not include:

- (a) Any amounts added to a purchaser's bill because of a charge made pursuant to:
  - (1. The tax imposed by this Ordinance;
  - (2. Additional charges added to a purchaser's bill pursuant to Section 9-222 of the Public Utilities Act;
  - (3. The tax imposed by the Illinois Telecommunications Excise Tax Act; or
  - (4. The tax imposed by Section 4251 of the United States Internal Revenue Code;
- (b) Charges for a sent collect telecommunication received outside the City;



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- (c) Charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. This subsection applies, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment or accounting equipment and also includes the usage of computers under a time-sharing agreement;
- (d) Charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are segregated and separately identified from other charges;
- (e) Charges to business enterprises certified under Sec, 9-222.1 of the Illinois Public Utilities Act at the extent of such exemption and during the period of time specified by the Illinois Department of Commerce and Community Affairs;
- (f) Charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries when the tax imposed under this Article has already been paid to a retailer and only to the extent that the charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries represent expense allocation between the corporations and not the generation of profit for the corporation rendering such service;
- (g) Bad debts ("bad debt" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards), however, if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made; or
- (h) Charges paid by inserting coins in coin-operated telecommunications devices.

"Interstate Telecommunications" means all telecommunications that either originate or terminate outside this State.

"Intrastate Telecommunications" means all telecommunications that originate and/or terminate within the State.

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"Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture corporation or a receiver, trustee, guardian or other representative appointed by order of any court, the Federal and State governments, including State Universities created by statute or any city, town or political subdivision of this State.

"Purchase at Retail" means the acquisition, consumption or use of telecommunications through a sale at retail.

"Retailer" means and includes every person engaged in the business of making sales at retail as defined in this Section.

"Retailer maintaining a place of business in this State" or any like term, means and includes any retailer having or maintaining within the State of Illinois, directly or by a subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse or other place of business, or any agent or other representative operating with this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business, agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in the State of Illinois.

"Sale at retail" means the transmitting, supplying or furnishing of telecommunications and all services rendered in connection therewith for consideration: (a) to persons other than the Federal and State governments, and State Universities created by statute and (b) other than between a parent corporation and its wholly owned subsidiaries, or between wholly owned subsidiaries, when the tax has already been paid to a retailer and the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for resale.

"Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received by a taxpayer. If this is not a defined location, as in the case of mobile phones, paging systems, maritime systems, air-to-ground systems and the like, "service address" shall mean the location of a taxpayer's primary use of the telecommunication equipment as defined by telephone number, authorization code or location in Illinois where bills are sent.

"Taxpayer" means a person who individually or through his agents, employees or permittee engage in the act of privilege of originating or receiving in this City telecommunications and who incurs a tax liability under this Article.

## **TAXATION**

"Telecommunications" in addition to the usual and popular meaning, includes, but is not limited to, messages or information transmitted through use of local, toll and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services; cellular mobile telecommunications services, specialized mobile radio services, paging service or any other form of mobile and portable one-way or two-way communications or any other transmission of messages or information by electronic or similar means, between or among points wire, cable, fiber optics, laser, microwave, radio, satellite or by similar facilities .

The definition of "telecommunications" set forth herein shall not include:

1. Value added services in which computer processing applications are used to act on the form, content, code and protocol of the information for purposes other than transmission; or
2. Purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him to the ultimate retail consumer who originates or terminates the taxable end-to-end telecommunications.

"City" shall mean the City of Kankakee, Illinois.

### **Sec. 31-92. Tax imposed - telecommunications.**

A tax is hereby imposed upon:

- (a) The act or privilege of originating or receiving in the City of Kankakee intrastate telecommunications by a person at a rate of five percent (5%) of the gross charge for such telecommunications purchased at retail from a retailer; and
- (b) The act or privilege of originating in or receiving in the City of Kankakee interstate telecommunication by a person at a rate of five percent (5%) of the gross charge for such telecommunications purchased at retail from a retailer. Any taxpayer, upon proof that the taxpayer has paid a tax in another State on the same event, shall be allowed a credit against the tax authorized by this subsection to the extent of the amount of such tax properly due and paid in another State which was not previously allowed as a credit against any other State or local tax in Illinois.

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Carrier access charges, right of access charges, charges for use of inter-company facilities and all telecommunications resold in the subsequent provision used as a component of, or integrated into, end-to-end telecommunications service shall be non-taxable under this Article as sales for resale.

The tax imposed by this Section 31-92 is not imposed on any act or privilege to the extent that such act or privilege may not, under the Constitution or statutes of the United States, be made the subject of taxation by the City.

### **Sec. 31-93. Collection of tax by retailers.**

- (a) The tax authorized by this Article VII shall be collected from the taxpayer by a retailer maintaining a place of business in Illinois and making or effectuating a sale at retail, and shall be remitted by the retailer to the City.
- (b) Any tax required to be collected pursuant to this Article VII and any such tax collected by the retailer shall constitute a debt owed by the retailer to the City.
- (c) Retailers shall collect the tax from the taxpayer by adding the tax to the gross charge for the act or privilege of originating or receiving telecommunications when sold for use in the manner prescribed by this Article VII.
- (d) The tax authorized by this Article VII shall constitute a debt of the purchaser to the retailer that provides the taxable service until paid, and if unpaid, is recoverable at law in the same manner as the original charge for taxable services.
- (e) If the retailer fails to collect the tax from a taxpayer, the taxpayer shall pay the tax directly to the City as provided in Section 31-96.

The City, upon application, shall authorize the collection of this tax by any retailer not maintaining a place of business in this State who, to the satisfaction of the City Comptroller, furnishes adequate security to insure collection and payment of the tax. Such retailer shall be issued, without charge, a permit to collect the tax imposed by this Article VII. When so authorized, it shall be the duty of the retailer to collect the tax upon all of the gross charges for telecommunications originated or received in the City in the same manner, and subject to the same requirements, as a retailer maintaining a place of business in Illinois.

## **TAXATION**

The tax authorized by this Article VII shall, when collected, be stated as a distinct item separate and apart from the gross charge for telecommunications.

### **Sec. 31-94                      Registration for telecommunications tax.**

Every retailer maintaining a place of business in this State on the effective date of this Article VII shall register with the City within thirty (30) days after that date.

Every person becoming a retailer maintaining a place of business in this State after the date of this Article VII shall register with the City within thirty (30) days after commencing that business.

### **Sec. 31-95.                      Filing returns and remittance by retailers.**

On or before the last day of each calendar month, every retailer maintaining a place of business in this State and every retailer authorized by the City Comptroller to collect the tax imposed by this Article VII shall file with the City a remittance return and remit all applicable tax for the preceding calendar month. The return shall be filed on a form prescribed by the City Comptroller, containing such information as she or he may reasonably require.

### **Sec. 31-96.                      Filing returns/payments by taxpayers.**

When a taxpayer does not pay the tax imposed by this Article to a retailer, the taxpayer shall file with the City a tax return and pay the tax upon that portion of gross charges paid to the retailer during the preceding calendar month on or before the last day of the month following that month. The return shall be filed on a form prescribed by the City.

When a taxpayer pays the tax imposed by this Article directly to the City, the City, at the request of the taxpayer, shall issue an appropriate receipt to the taxpayer showing the amount of tax paid.

### **Sec. 31-97.                      Resale numbers for telecommunications tax.**

If a person who originates or receives telecommunications in the City claims to be a reseller of telecommunications, that person shall apply to the City for a resale number. The applicant shall state facts showing why it is not liable for the tax imposed by this Article on the purchases of any telecommunication, shall furnish such additional information as the City reasonably requires.

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Upon approval of the application, the City shall assign a resale number to the applicant and shall certify the number to the applicant.

The City may cancel the resale number of any person if the number:

1. Was obtained through misrepresentation;
2. Is used to originate or receive telecommunications tax-free when such telecommunications are not for resale; or
3. Is no longer necessary because the person has discontinued making resales.

The act or privilege of originating or receiving telecommunications in the City shall not be made tax-free on the ground of being a sale for resale unless the person has an active resale number issued by the City and furnishes that number to the retailer in connection with certifying to the retailer that a sale is non-taxable as the sale for resale.

### **Sec. 31-98. Maintaining books and records - telecommunications tax.**

Every retailer maintaining a place of business in this State, every retailer authorized by the City to collect the tax imposed by this Article and every taxpayer shall keep accurate books and records of its business or activity, including original source documents and books of entry denoting the transactions that gave rise, or may have given rise, to any tax liability or exemption. All such books and records shall be kept in the English language and, at all time during business hours of the day, shall be subject to and available for inspection by the City.

### **Sec. 31-99. Severability - telecommunications tax.**

If any provision of this Article or the application thereof is held unconstitutional or otherwise invalid, such occurrence shall not affect other provisions of this Article or of this Chapter, or their application, that can be given effect without the unconstitutional or invalid provision or its application. Each unconstitutional or invalid provision, or application of such provision, is severable, unless otherwise provided by this Chapter.

Sec. 31-56-(1) of the Municipal code of the City of Kankakee is hereby repealed and revoked. (Article VII; Ord. 94-39; 6-20-94).

**TAXATION**

**ARTICLE VIII. ANNUAL MOTOR VEHICLE STICKER TAX.**

**Sec. 31-100. Motor Vehicle Sticker Tax.**

Article VIII shall be known as the annual Motor Vehicle Sticker Tax.

**Sec. 31-101. Definition motor vehicle tax.**

Whenever the term "Motor Vehicle" is used in this Chapter, it shall be construed to include passenger vehicles, trucks, buses, motorcycles, motor bicycles, motor scooters and all vehicles propelled otherwise than by muscular power, except traction engines and road rollers, the cars of electric and steam railways, and other motor vehicles running only upon rails or tracks; but, nothing in this Chapter shall be construed to affect bicycles or tricycles, or other propelled exclusively by muscular power.

**Sec. 31-101.1. (Repealed)**

**Sec. 31-102. Persons subject to licenses – Motor Vehicle Sticker.**

Every owner or operator of a motor vehicle who resides within the City of Kankakee or who Registers a motor vehicle with the Secretary of State, State of Illinois, at a city address shall be subject to motor vehicle licenses fee, as hereinafter provided, for the use of such motor vehicle upon any public street or alley within the City. This section shall require such an annual sticker through June 30<sup>th</sup> of each year. A payment of said tax or license fee on or after July 1<sup>st</sup> at 12:01 a.m. shall be subject to a late fee of \$35.00. (Ord. 04-94; Ord. 15-13 Ord.18-17)

**Sec. 31-103. Fees - vehicle stickers.**

**The annual fees to be paid for vehicle licenses shall be as follows:**

- |    |  |         |
|----|--|---------|
| 1. | Passenger Vehicle  | \$35.00 |
| 2. | Trucks or Buses with the following Class of licenses from the State of Illinois: |         |
|    | Class "A, B, and RV"   | \$35.00 |
|    | Class "D, F, H, J, K, L and N"   | \$45.00 |

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- |    |  |         |
|----|--|---------|
|    | Class "P, R, S, T, V, VDB, X and Z"  | \$45.00 |
| 3. | Municipal, County or State-owned vehicles  | Free    |
| 4. | Motorcycles & Motor Driven Cycles  | \$20.00 |
| 5. | All other Motor vehicles not listed above  | \$35.00 |
| 6. | One-Half Year Fees: Any owner or operator whose motor vehicle becomes subject to the tax or license fees between January 1st and June 30 <sup>th</sup> of that license year shall be subject to fee of \$18.00 (Ord. 15-13).   |         |
| 7. | Disabled Handicapped: Any owner or operator who is permanently disabled on or before the last day specified for paying the annual fee herein provided for and has been issued a permanent handicapped or permanent disabled Illinois License Plate for the specific vehicle claimed as exempt shall not be subject to paying any fee hereunder, but must display the vehicle sticker. (Ord. 1513). A payment of said tax or license fee on or after July 1 <sup>st</sup> at 12:01 a.m. shall be subject to a late fee of \$35.00.  |         |
| 8. | Disabled Veterans: Any owner or operator who is a permanently disabled veteran on or before the last day specified for paying the annual fee herein provided for, satisfactory proof that the applicant is a permanently disabled veteran, permanently handicapped or an active member of the United States Armed Forces must be furnished by such applicant by providing a permanently disabled veteran's vehicle registration card from the State of Illinois, a permanently disabled emblem from the Secretary of State of the State of Illinois or proof of active enlistment in the United States Armed Forces as issued by the United States Department of Defense at the time of said application, shall not be subject to paying any fee hereunder, but must display the vehicle sticker (Ord. No. 99-113, Sec. 31-103(8), 10-18-99; Ord. No. 2000-84, Sec. 31-103 (8); Ord. 14-19; Ord. 15-13). |         |
| 9. | New Residents: Any owner or operator of a motor vehicle, who has resided in the City for thirty (30) days, shall be required to purchase a license upon application to the City Clerk and payment of the appropriate fee based on classification and remaining year.   |         |



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10. The owner of a truck, who is required to pay a tax under subparagraph “2” hereinabove, shall be given a credit against any tax due hereunder equal to amount said individual is required to and does pay annually on said truck for any other licensing, tax or registration required on said truck by the City (Ord. 15-13).

### **Sec. 31-104. Dealer license - vehicle stickers.**

All dealers in motor vehicles held for sale, whether new or used and/or used by the same Dealer, shall pay a tax of \$100.00 for the first vehicle sticker dealer plate issued to them by the Secretary of State and shall pay an additional fee of \$25.00 for the second and every other additional dealer plate issued to them by the Secretary of the State of Illinois (Ord. 15-13).

### **Sec. 31-105. Application-issuance - vehicle stickers.**

Every owner or operator of a motor vehicle required to obtain a license for such motor vehicle as herein provided, shall file an application with the City or its agent as authorized by the City Council, setting forth the name and address of the applicant and a description of the motor vehicle sufficient to apply the appropriate license fee for which the license is required. Upon payment of the fee herein provided, the City or its agent shall issue or cause to be issued a license which shall be attested by the City Clerk authorizing the use of such motor vehicle within the City until the expiration of the license.

No license shall be issued to any applicant for a vehicle subject to the provisions of this Chapter, if the applicant failed to obtain such license until the license fee for the previous year is paid.

### **Sec. 31-106. License year - time of payment - vehicle stickers.**

Such tax or license fee shall be paid annually for each license year beginning July 1st and ending the succeeding June 30<sup>th</sup>. Such tax or license fee shall be paid for and displayed not later than 12:01 a.m. on July 1st each calendar year. The registered owner of a vehicle who fails to purchase a Kankakee City Vehicle Sticker on or before June 30<sup>th</sup> shall be subject to a late fee of \$35.00 beginning on July 1st at 12:01am, with the following exceptions:

- (a) Any owner purchasing a vehicle shall be allowed thirty (30) days to pay the license fees, with proof of purchase date; and
- (b) Any new residents shall be allowed thirty (30) days after moving in to

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pay the license fee before becoming subject to the late fee, with proof of residency date such as a post office change of address form, cell phone bill, utility bill, driver's license, or other valid proof of date of residency.

### **Sec. 31-107. Transfer - vehicle stickers.**

Upon the sale or transfer of a motor vehicle which was duly licensed under this law before such sale or transfer, the vendor or transferer shall cause to be removed such City license for motor vehicle so sold or transferred and the license so issued shall cease to apply to said vehicle. A motor vehicle license may be transferred from one motor vehicle or another. Upon application and payment of a transfer fee of twenty dollars (\$20.00), the City shall issue to the owner of operator a new license for any other vehicle which he owns or operates and which required the same or lower fee under this ordinance. If the license is being transferred to a motor vehicle which requires a higher tax or license fee, the fee of the license being transferred shall apply against the new fee. A motor vehicle license shall not be transferred from one owner to another.

### **Sec. 31-108. Vehicle Sticker.**

Upon payment of the specified fee, each applicant shall be given a vehicle sticker of such design and material as may be approved by the City Council. Said vehicle sticker shall be fastened in a prominent place in the lower right-hand corner of the front windshield by June 30th. The Owner who fails to fasten the vehicle sticker in the lower right-hand corner before July 1st shall be subject to the \$35.00 late fee plus possible adjudication costs. All expired vehicle tax stickers shall be removed from the windshield. In vehicles not having a windshield, the vehicle sticker shall be placed in a prominent place on the vehicle.

### **Sec. 31-109. Antique Vehicles - stickers.**

No license shall be required for any antique vehicle, which shall be defined as same are defined by the Secretary of the State of Illinois-Motor Vehicle Division, so long as said vehicle is registered with the Secretary of State as an antique vehicle and displays antique vehicle license plates.

### **Sec. 31-110. Penalty - vehicle sticker.**

Any person, firm, or corporation that violates, disobeys, commits, neglects, refuses to comply

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with or resist the enforcement of any provision of this chapter shall be subject to a penalty of not less than One Hundred Dollars (\$100.00) and not more than Five Hundred Dollars (\$500.00). In the event said penalty is not paid within fourteen (14) days, it shall double to the amount being Two Hundred Dollars (\$200.00), if paid within thirty (30) days of the date of Notice of Violation. If not paid within thirty (30) days of said date of notice, the penalty shall be as determined by the Administrative Adjudication Hearing Officer, pursuant to Section 36-12 of this Code. (Article VIII; Ord. 94-42, 6-20-94; Ord. No. 98-88, Sec. 31-110, 11-2-98; Ord. 14-19; Ord. 15-13).

### **Sec. 31-111.            Service of Notice of Violation**

- (a) Service of the Notice of Violation shall be done as set forth in Chapter 36, Article I, Section 36-01 *et seq* of this Code entitled *Administrative Adjudication of Certain Ordinance Violations*.

### **Sec. 31-112. Severability.**

If any provision of this Ordinance or its application, or any person or circumstance is held to be invalid for any reason, the remainder of said application of its provisions to the other persons or circumstances shall not be in any way affected.

**Sec. ~~31-112~~ 31-113– 31-119. Reserved. (Ord. 2021-44, 7/6/2021)**

## **ARTICLE IX. TELECOMMUNICATIONS INFRASTRUCTURE MAINTENANCE FEE.**

Ordinance Number 97-95

### **Sec. 31-120.            Definitions - Telecommunications Infrastructure Maintenance Fee.**

"Gross Charges" means the amount paid to a telecommunications retailer for the act or privilege of originating or receiving telecommunications within the City, and for all services rendered in connection therewith, valued in money whether paid in money or otherwise, including cash, credits, services, and property of every kind or nature, and shall be determined without any deduction on account of the cost of such telecommunications, the cost of the materials used, labor or service costs or any other expense whatsoever. In case credit is extended, the amount thereof

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shall be included only as and when paid. "Gross charges" for private line service shall include charges imposed at each channel point within the City, charges for the channel mileage between each channel point within the City, and charges for the channel mileage between each channel point within the City, and charges for that portion of the interstate inter-office channel provided within the City. However, "gross charges" shall not conclude:

- (1) any amounts added to a purchaser's bill because of a charge made under (i) the fee imposed by this Section, (ii) additional charges added to a purchaser's bill under Section 9-221 or 9-222 of the Public Utilities Act
  - (iii) amounts collected under Section 8-11-17 of the Illinois Municipal Code
  - (iv) the tax imposed by the Telecommunications Excise Tax Act
  - (v) 911 surcharges or,
  - (vi) the tax imposed by Section 4251 of the Internal Revenue Code;
- (2) charges for a sent collect telecommunication received outside the City;
- (3) charges for leased time on equipment or charges for the storage of data or information or subsequent retrieval or the processing of data or information intended to change its form or content. Such equipment includes, but is not limited to, the use of calculators, computers, data processing equipment, tabulating equipment, or accounting equipment and also includes the usage of computers under a time-sharing agreement;
- (4) charges for customer equipment, including such equipment that is leased or rented by the customer from any source, wherein such charges are desegregated and separately identified from other charges;
- (5) charges to business enterprises certified under Section 9-222.1 of the Public Utilities Act to the extent of such exemption and during the period of time specified by the City;
- (6) charges for telecommunications and all services and equipment provided in connection therewith between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, and only to the extent that the

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charges between the parent corporation and wholly owned subsidiaries or between wholly owned subsidiaries, represent expense allocation between the corporations and not the generation of profit other than a regulatory required profit for the corporation rendering such services;

- (7) bad debts ("bad dept" means any portion of a debt that is related to a sale at retail for which gross charges are not otherwise deductible or excludable that has become worthless or uncollectible, as determined under applicable federal income tax standards; if the portion of the debt deemed to be bad is subsequently paid, the retailer shall report and pay the tax on that portion during the reporting period in which the payment is made);
- (8) charges paid by inserting coins in coin-operated telecommunications devices;
- (9) charges for telecommunication and all services and equipment provided to the City;

"Public Right-of-Way" means any municipal street, alley, water or Public right-of-way dedicated or commonly used for utility purposes, including utility easements wherein the City has acquired the right and authority to locate or permit the location of utilities consistent with telecommunications facilities. "Public Right-of-Way" shall not include any real or personal City property that is not specifically described in the previous sentence and shall not include City buildings and other structures or improvements, regardless of whether they are situated in the public right-of-way.

"Retailer maintaining a place of business in this State", or any like term, means and includes any retailer having or maintaining within the State of Illinois directly or by subsidiary, an office, distribution facilities, transmission facilities, sales office, warehouse, or other place of business or any agent or other representative operating within this State under the authority of the retailer or its subsidiary, irrespective of whether such place of business or agent or other representative is located here permanently or temporarily, or whether such retailer or subsidiary is licensed to do business in this State.

"Sale of telecommunications at retail" means the transmitting, supplying, or furnishing of telecommunications and all services rendered in connection therewith for a consideration other than between a parent corporation and its wholly owned subsidiaries or between wholly owned subsidiaries, when the gross charge made by one such corporation to another such corporation is not greater than the gross charge paid to the retailer for their use or consumption and not for sale.

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"Service address" means the location of telecommunications equipment from which telecommunications services are originated or at which telecommunications services are received. If this is not a defined location, as in the case of wireless telecommunications, paging systems, maritime systems, air-to-ground systems, and the like, "service address" shall mean the location of the customer's primary use of the telecommunications equipment as defined by the location in Illinois where bills are sent.

"Telecommunications" includes, but is not limited to, messages or information transmitted through use of local, toll, and wide area telephone service, channel services, telegraph services, teletypewriter service, computer exchange services, private line services, specialized mobile radio services, or any other transmission of messages or information by electronic or similar means, between or among points by wire, cable, fiber optics, laser, microwave, radio, satellite, or similar facilities, unless the context clearly requires otherwise, "telecommunications" shall also include wireless telecommunications as hereinafter defined. "Telecommunications" shall not include value added services in which computer processing applications are used to act on the form, content, code, and protocol of the information for purposes other than transmission.

"Telecommunications" shall not include purchase of telecommunications by a telecommunications service provider for use as a component part of the service provided by him or her to the ultimate retail consumer who originates or terminates end-to-end communications. Retailer access charges, right of access charges, charges for use of inter company facilities, and all telecommunications resold in the subsequent provision and used as a component of or integrated into, end-to-end telecommunications service shall not be included in gross charges as sales for resale. "Telecommunications" shall not include the provision of cable services through a cable system as defined in the Cable Communications Act of 1984 (47 U.S. C. Sections 521 and following) as now or hereafter amended or cable or other programming services subject to an open video system fee payable to the City through an open video system as defined in the Rules of the Federal Communications Commission (47 C.D.F. 76.1550 and following) as now or hereafter amended.

"Telecommunications provider" means (1) any telecommunications retailer; and (2) any person that is not a telecommunications retailer that installs, owns, operates or controls equipment in the public right-of-way that is used or designed to be used to transmit telecommunications in any form.

"Telecommunications retailer " or "retailer" or "carrier" means and includes every person engaged in the business of making sales of telecommunications at retail as defined in this Section. The City may, in its discretion, upon application, authorize the collection of the fee hereby imposed by any retailer not maintaining a place of business within this State, who, to the satisfaction of the City, furnishes adequate security to ensure collection and payment of the fee.

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When so authorized, it shall be the duty of such retailer to pay the fee upon all of the gross charges for telecommunications in the same manner and subject to the same requirements as a retailer maintaining a place of business within the City.

"Wireless telecommunications" includes cellular mobile telephone services, personal wireless services as defined in Section 704(C) of the Telecommunications Act of 1996 (Public Law No. 104-104) 42, U.S.C. 332(c)(7), as now or hereafter amended, including all commercial mobile radio services, and paging services. (Ord. No. 97-95, 12-97)

### **Sec. 31-121. Registration of telecommunications providers.**

Every telecommunications provider as defined by this Article shall register with the City within 30 days after the effective date of this Article or becoming a telecommunications provider, whichever is later, on a form to be provided by the City, provided, however, that any telecommunications retailer that has filed a return pursuant to 31-123, paragraph three of this Article shall be deemed to have registered in accordance with this Section.

Every telecommunications provider who has registered with the City pursuant to 31-121, paragraph one has an affirmative duty to submit an amended registration form or current return as required by 31-123, paragraph three, as the case may be, to the City within 30 days from the date of the occurrence of any changes in the information provided by the telecommunications provider in the registration form or most recent return on file with the City. (Ord. No. 97-95, 1297)

### **Sec. 31-122.                   Municipal telecommunications infrastructure maintenance fee.**

A City telecommunications infrastructure maintenance fee is hereby imposed upon all telecommunications retailers in the amount of 1.0 % of all gross charges charged by the telecommunications retailer to service addresses within the City for telecommunications originating or received in the City.

Upon the effective date of the infrastructure maintenance fee authorized in this Article, the City infrastructure maintenance fee authorized hereunder shall be the only fee or compensation for the use of all public rights-of-way within the City by telecommunications retailers. Imposition of the infrastructure maintenance fee provided under this Article does not, however, serve as a limitation on the levying of any taxes or imposition of any fee otherwise authorized by law.

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The City telecommunications infrastructure maintenance fee authorized by this Section shall be collected, enforced, and administered as set forth in Section 31-114 of this Article.(Ord. No. 9795, 12-97)

### **Sec. 31-123. Collection, enforcement, and administration of telecommunications infrastructure maintenance fees.**

A telecommunications retailer shall charge to and collect from each customer an additional charge in an amount equal to the City infrastructure maintenance fee attributable to that customer's service address.

Unless otherwise approved by the City Comptroller the infrastructure maintenance fee shall be remitted by the telecommunication retailer to the City not later than the last day of the month subsequent to the month in which a bill is issued to the customer, provided, however, that the telecommunications retailer may retain an amount not to exceed 2% of the City infrastructure maintenance fee collected by it to reimburse itself for expenses incurred in accounting for and remitting the fee.

Remittance of the municipal infrastructure fee to the City shall be accompanied by a return, in a form to be prescribed by the City Comptroller which shall contain such information as the City Comptroller may reasonably require.

Any infrastructure maintenance fee required to be collected pursuant to this Article and any such infrastructure maintenance fee collected by such telecommunication retailer shall constitute a debt owed by the telecommunications retailer to the City. The charge imposed under 31-123, paragraph one by the telecommunications retailer pursuant to this Article shall constitute a debt of the purchaser to the telecommunications retailer who provides such services until paid and, if unpaid, is recoverable at law in the same manner as the original charge for such services.

If it shall appear that an amount of infrastructure maintenance fee has been paid that was not due under the provisions of this Article, whether as a result of a mistake of fact or an error of law, then such amount shall be credited against any infrastructure maintenance fee due, or to become due, under this Article, from the telecommunications retailer who made the erroneous payment; provided, however, the City Comptroller may request, and telecommunications retailer shall provide, written substantiation for such credit. However, no claim for such credit may be made more than three years after the date of the erroneous payment unless, (1) the credit is used only to offset a claim of underpayment made by the City within the applicable statutory period of



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limitations, and (2) the credit derives from an overpayment made by the same telecommunications retailer during the applicable statutory period of Limitation.

Amounts paid under this Article by telecommunications retailers shall not be included in the tax base under any of the following acts as described immediately below:

- (1) "gross charges" for purpose of the Telecommunications Excise Tax Act.
- (2) "gross receipts" for purposes of the municipal utility tax as prescribed in Section 8-11-2 of the Illinois Municipal Code.
- (3) "gross charges" for purposes of the municipal telecommunications tax as prescribed in Section 8-11-17 of the Illinois Municipal Code.
- (4) "gross revenue" for purposes of the tax on annual gross revenue of public utilities prescribed in Section 2-202 of the Public Utilities Act.

The City shall have the right, in its discretion, to audit the books and records of all telecommunications retailers subject to this Article to determine whether the telecommunication retailer has properly accounted to the City for the City infrastructure maintenance fee. Any underpayment of the amount of the City infrastructure maintenance fee due to the City by the telecommunications retailer shall be paid to the City plus five (5%) percent of the total amount of the underpayment determined in an audit, plus any costs incurred by the City in conducting the audit, in an amount not to exceed five (5%) percent of the total amount of the underpayment determined in an audit. Said sum shall be paid to the City within twenty-one (21) days after the date of issuance of an invoice for same.

The City Comptroller, or his or her designee, may promulgate such further or additional regulations concerning the administration and enforcement of this Article, consistent with its provisions, as may be required from time to time and shall notify all telecommunication retailers that are registered pursuant to 31-121 of this Article of such regulations. (Ord. No. 97-95, 12-97)

### **Sec. 31-124. Compliance with other laws.**

Nothing in this Article shall excuse any person or entity from obligations imposed under any law, including but not limited to:

- (1) generally applicable taxes; and

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- (2) standards for construction on, over, under, or within, use of or repair of the public rights-of-way, including standards relating to free standing towers and other structures upon the public rights-of-way, as provided; and
- (3) any liability imposed for the failure to comply with such generally applicable taxes or standards governing construction on, over, under, or within, use of or repair of the public rights-of-way; and
- (4) compliance with any ordinance or provision of this Code concerning uses or structures not located on, over, or within the right-of-way. (Ord. No. 97-95, 12-97)

### **Sec. 31-125. Existing Franchises and Licenses.**

Any franchise, license, or similar agreements between telecommunications retailers and the City entered into before the effective date of this Article regarding the use of public rights-of-way shall remain valid according to and for their stated terms except for any fees, charges or other compensation to the extent waived. (Ord. No. 97-95, 12-97)

### **Sec. 31-126. Penalties.**

Any telecommunications provider who violates disobeys, omits, neglects or refuses to comply with any of the provision of this Article shall be subject to fine in accordance with the general penalty provisions of the City Municipal Code. (Ord. No. 97-95, 12-97)

### **Sec. 31-127. Enforcement.**

Nothing in this Article shall be construed as limiting any additional or further remedies that the City may have for enforcement of this Article. (Ord. No. 97-95, 12-97)

### **Sec. 31-128. Severability.**

If any section, subsection, sentence, clause, phrase or portion of this Article is for any reason held invalid or unconstitutional by any court of competent jurisdiction, such portion shall be deemed a separate, distinct, and independent provision and such holding shall not affect the validity of the remaining portions hereof. (Ord. No. 97-95, 12-97)

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### **Sec. 31-129. Conflict.**

This Article supersedes all Articles or parts of Articles or Chapters adopted prior hereto which are in conflict herewith to the extent of such conflict. (Ord. No. 97-95, 12-97)

### **Sec. 31-130. Waiver and Fee Implementation.**

The City hereby waives all fees, charges, and other compensation that may accrue, after the effective date of the waiver, to the City by a telecommunications retailer pursuant to any existing City franchise, license, or similar agreement with a telecommunications retailer during the time the City imposes the Telecommunications Infrastructure Maintenance Fee. This waiver shall only be effective during the time the Infrastructure Maintenance Fee provided for in this Ordinance is subject to being lawfully imposed on the telecommunication retailer and collected by the telecommunications retailer from the customer.

The City Clerk shall send a notice of the waiver by certified mail/return receipt requested to each telecommunications retailer with whom the City has a franchise.

The City infrastructure maintenance fee provided for in this Ordinance shall become effective and imposed on the first day of the month not less than ninety (90) days after the City provides written notice by certified mail to each telecommunications retailer with whom the City has an existing franchise, license, or similar agreement that the City waives all compensation under such existing franchise, license, or similar agreement during such time as the fee is subject to being lawfully imposed and collected by the retailer and remitted to the City. The infrastructure maintenance fee shall apply to gross charges billed on or after the effective date as established in the preceding sentence. (Ord. No. 97-95, 12-97)

### **Sec. 131 - 134 Reserved.**

## **ARTICLE X - MUNICIPAL GAS USE TAX**

### **Sec. 31-135 - Short Title - Municipal Gas Use Tax.**

The tax imposed by this Article shall be known as the "Municipal Gas Use Tax" and is imposed in addition to all other taxes by the City of Kankakee, the State of Illinois or any other municipal corporation or political subdivision thereof.

### **Sec. 31-136. Definitions - Gas Use Tax.**

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For the purpose of this Article, the following definitions shall apply:

- (a) "Person" means any natural individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company, municipal corporation or political subdivision of this State, or a receiver, trustee, conservator or other representative appointed by order of any court.
- (b) "Public Utility" means a public utility as defined in Section 3-105 of the Public Utilities Act.
- (c) "Public Utilities Act" means the Public Utilities Act, as amended, Illinois Compiled Statutes, Chapter 220, Section 5/1-101 et seq.
- (d) "Transportation retail Purchaser" means any person who purchases transportation gas in a sale at retail.
- (e) "Sale at Retail" means any sale by a retailer to a person for use or consumption, and not for sale. For this purpose, the term "retailer" means any person engaged in the business of distribution, supplying, furnishing or selling gas.

### **Sec. 31-137. Municipal Gas Use Tax.**

- (a) Except as otherwise provided by this Article, a tax imposed on the privilege of using or consuming gas in the City of Kankakee that is purchased in sale at retail at the rate of (\_\_\_) cent(s) per therm.
- (b) The ultimate incidence of and liability for payment of the tax is on the Transportation Retail Purchaser, and nothing in this Article shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.
- (c) The Transportation Retail Purchaser shall pay the tax, measured by therms of gas delivered to the Transportation Retail Purchaser's premises, to the public utility designated to collect the tax pursuant to Section 31-136 of this Code, on or before the payment due date of the public utility's bill first reflecting the tax, or directly to the City Treasurer on or before the 15th day of the second month following the month in which the gas is delivered to the Transportation Retail Purchaser if no

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public utility has been designated to collect the tax, pursuant to Section 31-114 or if the gas is delivered by a person other than a public utility so designated.

- (d) to prevent multiple taxation, the use of gas in the City by a Transportation Retail Purchaser properly subject to a tax imposed by any state or by the City or other municipality with respect to the sale at retail of such gas, whether such tax is imposed upon the Transportation Retail Purchaser, or upon the seller and separately charged to the transportation Retail Purchaser by the seller, shall be exempt from the tax imposed by this Article. For purposes of this paragraph only, any change imposed on a Non-Transportation Retail Purchaser pursuant to Section 9-221 or Section 9-222 of the Public Utilities Act with respect to a sale at retail shall be treated as a tax properly imposed on the Non-Transportation Retail Purchaser by the State of Illinois or by the City or municipality.
- (e) A purchaser who purchases gas for resale and therefore does not pay the tax imposed by this Article with respect to the use of consumption of the gas, but who later uses or consumes part or all of the gas, shall pay the tax directly to the City of Kankakee Treasurer on or before the 15th day of the second month following the month in which the gas is used or consumed.
- (f) The tax shall apply to gas for which the delivery to the customer is billed by a public utility after October 1, 1998.

### **Sec. 31- 138. Collection of Gas Use Tax.**

The City of Kankakee Treasurer is authorized to enter into a contract for collection of the tax imposed by this Article with any public utility providing gas service in the City of Kankakee. The contract shall include and substantially conform with the following provisions:

1. The Public utility will collect their tax with respect to gas delivered by it to its transportation customers as an independent contractor.
2. The public utility will remit collected taxes to the City of Kankakee Treasurer no more often than once each month.
3. The public utility will be entitled to withhold from tax collections a service fee not to exceed 3 percent of the amount collected and timely remitted to the City Treasurer.

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4. The obligation of the public utility to collect and remit the tax shall not apply to gas deliveries billed by the public utility to a Transportation Retail Purchaser prior to a date two months subsequent to the execution of such contract.
5. The public utility shall not be liable to the City of Kankakee for any tax not actually collected from a Transportation Retail Purchaser; and
6. Such additional terms as the parties may agree upon.

A public utility designated to collect the tax imposed by this Chapter from its customers shall bill each customer for the tax on all gas delivered to the customer unless the customer's use or consumption is exempt from the tax pursuant to Section 31-137 of this code.

### **Sec. 31-139. Books and Records - Gas Use Tax.**

- (a) Every taxpayer shall keep accurate books and records, including original source documents and books of entry, denoting the activities or transactions that gave rise, or may have given rise to any tax liability or exemption under this Article. All such books and records shall, at all times during business hours, be subject to and available for inspection by the City of Kankakee.
- (b) Every person that delivers customer-owned gas within the corporate limits of the City of Kankakee shall make available to the City Treasurer, upon his request, all names, addresses and terms delivered with respect to such deliveries. (Ord. No. 98-92, Sec 111..114, 11-16-98)

## **ARTICLE X Section 31-140 Municipal Gas Use Tax**

### **1. Short Title**

The tax imposed by this Article shall be known as the "Municipal Gas Use Tax" and is imposed in addition to all other taxes imposed by the City of Kankakee, the State of Illinois, or any other Municipal Corporation or political subdivision thereof.

### **2. Definitions**

For the purpose of this Article, the following definitions shall apply:

- a. "Person" means any individual, firm, trust, estate, partnership, association, joint stock company, joint venture, corporation, limited liability company,

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municipal corporation or political subdivision of this state, or a receiver, trustee, conservator or other representative appointed by order of any court.

- b. "Public Utility" means a public utility as defined in Section 3-105 of the Public Utilities Act.
- c. "Public Utilities Act" means the Public Utilities Act as amended, (220 ILCS 5/1-101 et seq.).
- d. "Retail Purchaser" means any Person who purchases gas in a Sale at Retail.
- e. "Sale at Retail" means any sale of gas by a retailer to a Person for use or consumption, and not for resale. For this purpose, the term "retailer" means any Person engaged in the business of distributing, supplying, furnishing or selling gas.

### **3. Use Tax**

- a. Except as otherwise provided by this Article, a tax is imposed on the Privilege of using or consuming gas in the City that is purchased in a Sale at Retail at the rate of 4.5 cent(s) per therm.
- b. The ultimate incidence of and liability for payment of the tax is on the Retail Purchaser, and nothing in this Article shall be construed to impose a tax on the occupation of distributing, supplying, furnishing, selling or transporting gas.
- c. The Retail Purchaser shall pay the tax, measured by therms of gas delivered to the Retail Purchaser's premises, to the Public Utility designated to collect the tax pursuant to Section 4 of this Article on or before the payment due date of the Public Utility's bill first reflecting the tax, or directly to the City Treasurer on or before the fifteenth day of the second month following the month in which the gas is delivered to the Retail Purchaser if no Public Utility has been designated to collect the tax pursuant to Section 4 or if the gas is delivered by a person other than a Public Utility so designated.
- d. Nothing in this article shall be construed to impose a tax upon any person, business or activity which, under the constitutions of the United States or State of Illinois, may not be made the subject of taxation by the City.

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- e. A person who purchases gas for resale and therefore does not pay the tax imposed by this Article with respect to the use or consumption of the gas, but who later uses or consumes part or all of the gas, shall pay the tax directly to the City Treasurer on or before the fifteenth day of the second month following the month in which the gas is used or consumed.
  - f. The tax shall apply to gas for which the delivery to the Retail Purchaser is billed by a Public Utility on or after July 1, 2009.
  - g. If it shall appear that an amount of tax has been paid which was not due under the provisions of this Article, whether as a result of a mistake of fact or an error of law, then such amount shall be (i) credited against any tax due, or to become due, under this Article from the taxpayer who made the erroneous payment or (ii) subject to a refund if no such tax is due or to become due; provided that no amounts erroneously paid more than three (3) years prior to the filing of a claim therefore shall be so credited or refunded.
  - h. No action to recover any amount of the tax due under the provisions of this Article shall be commenced more than three (3) years after the sue date of such amount.
  - i. To prevent multiple taxation, the use of gas in the City by a Retail Purchaser shall be exempt from the tax imposed by this Article if the gross receipts from the Sale at Retail of such gas to the Retail Purchaser are properly subject to a tax imposed upon the seller of such gas pursuant to the City's municipal utility tax, as amended from time to time [citation to ordinance or code section] authorized pursuant to Section 8-11-2 of the Illinois Municipal Code (65 ILCS 5/8-11-2).]
4. Books and records.
- Every taxpayer shall keep accurate books and records, including original source documents and books of entry, denoting the activities or transactions that gave rise, or may have given rise to any tax liability or exemption under this Article/. All such books and records shall, at all times during business hours, be subject to and available for inspection by the City.

## **ARTICLE XI. VIDEO GAMING TERMINAL OWNERSHIP TAX**



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### **Sec. 31-141 Short title.**

This Article shall be known and may be cited as the “Video Gaming Terminal Tax Ordinance”.

### **Sec. 31-142 Definitions.**

The following words, terms, and phrases, when used in this Article, shall have the meanings ascribed to them in this section, except where the context clearly indicates a different meaning.

*Owner* means any individual, corporation, limited liability corporation, organization, government, governmental subdivision or agency, business trust, estate, trust, partnership, association and any other legal entity that has an ownership interest in Video Gaming Terminals. The holder of a Liquor License on the premises wherein the video gaming terminal is located is also considered an owner pursuant to this ordinance.

*Video Gaming Terminal* means any electronic video game Terminal that, upon insertion of cash, debit cards, credit cards or any other bank cards, is available to play or simulate the play of a video game, including but not limited to video poker, line up, and blackjack, utilizing a video display and microprocessors in which the player may receive free games or credits that can be redeemed for cash and as further defined under the Video Gaming Act, 230 ILCS 40/5. The term does not include a Terminal that directly dispenses coins, cash, or tokens or is for amusement purposes only.

### **Sec. 31-143 Registration.**

- Any owner of a Video Gaming Terminal to be played or operated by the public at any place in the City and person which currently displays a Video Gaming Terminal, to be played or operated by the public at any place owned or leased by such person, shall register with the Office of the Mayor of the City of Kankakee or his/her designee within ten (10) days after the effective date of this article (November 15, 2018) that they own or display a Video Gaming Terminal for public use in the City.
- Any owner of a Video Gaming Terminal to be played or operated by the public at any place in the City and any person which displays a Video Gaming Terminal, to be played or operated by the public at any place owned or leased by such person after the effective date of this article, shall register with the Office of the Mayor of the City of Kankakee or

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his/her designee that they own or display a Video Gaming Terminal for public use in the City prior to making the Video Gaming Terminal available for play or operation by the public in the City.

- Registration shall be made with the Office of the Mayor of the City of Kankakee or his/her designee through a form furnished by the Mayor for such purpose, and shall contain such information as the Office of the Mayor of the City of Kankakee or his/her designee requires. An owner of a Video Gaming Terminal who makes a Video Gaming Terminal available for operation or play by the public in the City will be required to remit the tax at the time of registration or in the timeframe otherwise required by the Office of the Mayor of the City of Kankakee or his/her designee.

### **Sec. 31-144 Tax Imposed.**

Sec. 31-144 Tax Imposed.

A tax is imposed upon each Video Gaming Terminal that is displayed by a person for play or operation by the public in the City of Kankakee, as follows:

**Tax Rate on Video Gaming Terminal.** For each 12-month period as established by the Office of the Mayor of the City of Kankakee or his/her designee, an annual tax in the amount of \$250.00 is imposed upon each Video Gaming Terminal; said tax shall be paid by the owner and shall be applicable for Video Gaming Terminals that are displayed by a person for play or operation by the public in the City of Kankakee. The tax shall be due for the entire year covered by this ordinance with payments to be made by April 30 of every year the City approves of a Video Gaming Terminal(s). (Ord. 2020-04, 1-6-2020)

- *Additional Taxes.* The taxes imposed in this article is an addition to all other taxes imposed by the City or the State of Illinois.

### **Sec. 31-145 Tax Remittance, Emblem and Display; Additional Information for Terminal.**

- Before any Video Gaming Terminal is made available for use by public in the City, the owner of the Video Gaming Terminal who makes the Video Gaming Terminal available to a person displaying a Video Gaming Terminal, to be played or operated by the public

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at any place owned or leased by such person shall remit the tax due to the Office of the Mayor of the City of Kankakee or his/her designee, in accordance with the policies, procedures, rules, and forms promulgated by the Office of the Mayor of the City of Kankakee or his/her designee.

- The Office of the Mayor of the City of Kankakee or his/her designee shall issue as evidence of the payment of the tax a non-refundable and non-transferable, self-voiding adhesive tax emblem which shall be affixed to each Video Gaming Terminal. Such emblem shall be valid from the date of issuance through the date set forth thereon. Such emblem shall bear the words “City of Kankakee-Video Gaming Terminal Tax”, and such other wording as may be proscribed by the Office of the Mayor of the City of Kankakee or his/her designee.
- No owner or person shall make a Video Gaming Terminal available for play or operation by the public in the City unless (1) the tax has been paid on said Video Gaming Terminal and is evidenced by tax emblem conspicuously affixed to the Video Gaming Terminal; and (2) the Video Gaming Terminal is plainly labeled with the name, address, and telephone number of the person displaying the Video Gaming Terminal for play or operation by the public, and such information as may be required by the Office of the Mayor of the City of Kankakee or his/her designee through policy, procedure, rule, or form.
- No owner or person shall take, destroy, remove, alter, deface, mutilate, obliterate, or make illegible the tax emblem provided for in this section during the year for which it was issued, or make available to the public in the City a Video Gaming Terminal if the tax emblem or label has been taken, destroyed, removed, altered, defaced, mutilated, obliterated or has become illegible.

### **Sec. 31-146    Removal of Emblem upon Transfer of Display.**

Immediately upon the transfer of ownership of a Video Gaming Terminal that is displayed for play or operation by the public within the City, when such transfer is made prior to the expiration date set forth on the emblem provided for in this article, the transferor shall remove said emblem from the Terminal so transferred. It shall be the duty of the transferee of said Terminal to remove and deliver to the transferor such emblem if still affixed to said Terminal at the time of transfer. It shall be unlawful for

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any such transferee to display such Video Gaming Terminal for play or operation by the public within the City without first having removed said emblem.

### **Sec. 31-147 Unlawful Use of Emblem on Other Terminals.**

It shall be unlawful for any owner or person to affix or cause to be affixed the emblem provided for in this article on any Video Gaming Terminal other than the Video Gaming Terminal upon which said emblem was intended to be affixed at the time of issuance by the Office of the Mayor of the City of Kankakee or his/her designee.

### **Sec. 31-148 Duplicate Emblem.**

In the event an emblem provided for in this article is lost or stolen, defaced, mutilated, or destroyed, the Office of the Mayor of the City of Kankakee or his/her designee may issue a duplicate emblem upon receipt of a \$100.00 replacement fee, per duplicate emblem.(Ord. 2020-74, 7/20/2020)

### **Sec. 31-149 Violations, Penalties.**

- It shall be unlawful for any owner or person to display a Video Gaming Terminal for play or operation by the public within the City unless (1) the owner of the Video Gaming Terminal and person displaying the Video Gaming Terminal for play or operation by the public within the City has registered with the Office of the Mayor of the City of Kankakee or his/her designee; (2) the tax has been paid on said Video Gaming Terminal and evidenced by the tax emblem conspicuously affixed to the Video Gaming Terminal; and (3) the Video Gaming Terminal is plainly labeled with the name, address and telephone number of the owner of the Video Gaming Terminal. If at any time a Video Gaming Terminal does not bear the emblem required by this article, the person displaying the Video Gaming Terminal, to be played or operated by the public at any place owned or leased by such person and the owner shall be jointly and severally liable for a fine of \$1,000 for the first offense relative to the Video Gaming Terminal, and \$2,000 for any subsequent offense relative to any Video Gaming Terminal. Every day such violation continues shall constitute a separate and distinct offense.
- It shall be unlawful for any owner or person to take, destroy, remove, alter, deface, mutilate, obliterate, or make illegible the tax emblem provided for in this section during the year for which it was issued, or make available to the public for play or operation in the City a Video Gaming Terminal if the tax emblem or label has been taken, destroyed, removed, altered,

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defaced, mutilated, obliterated, or has become illegible. Any person or owner who, without authority, takes, destroys, removes, alters, defaces, mutilates, obliterates, or makes illegible the emblem provided for in this article, shall be fined \$1,000 for each offense. Every such unauthorized taking, destruction, removal obliteration, or making illegible of said emblem shall constitute a separate offense.

### **Sec. 31-150 Books and Records.**

Every person who is subject to this tax shall keep and maintain accurate and complete documents, books, and records of each transaction or activity subject to this ordinance, from start to complete, including all original source documents. All such books and records shall be kept by owner and shall, at all reasonable times during normal business hours, be open to inspection, audit, or copying by the Office of the Mayor of the City of Kankakee or his/her designee and its agents.

### **Sec. 31-151 Inspection; Audits.**

Books and records kept in compliance with this article shall be made available to the Office of the Mayor of the City of Kankakee or his/her designee upon request for inspection, audit and/or copying during regular business hours. Representatives of the Office of the Mayor of the City of Kankakee or his/her designee shall be permitted to inspect any premises for the display of Video Gaming Terminals. It shall be unlawful for any owner or person to prevent, or hinder a duly authorized Mayoral representative from performing the enforcement duties provided in this article.

### **Sec. 31-152 Rulemaking Authority.**

The Office of the Mayor of the City of Kankakee or his/her designee may promulgate policies, procedures, rules, definitions and forms to carry out the duties imposed by this ordinance. As far as practicable in accordance with the purposes of this ordinance, such procedures, regulations, rules, policies, and forms shall be consistent with the practice of the Video Gaming Terminal industry.

### **Sec. 31-153 Enforcement and Inspection, Office of the Mayor of the City of Kankakee or his/her designee.**

The Office of the Mayor of the City of Kankakee or his/her designee shall enforce this article and the Chief of Police of the City of Kankakee are authorized to assist the

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Office of the Mayor of the City of Kankakee or his/her designee in said enforcement, including issuing citations hereunder.

### **Sec. 31-154 Liquor License Holder.**

If any liquor license holder fails to be current in the payment of the tax imposed by this ordinance at the effective date of this Ordinance, the liquor license on the premises wherein the video gaming terminal(s) are located, may be suspended by the local Liquor Commissioner (Mayor) until said tax is made current. No liquor may be sold from said premises until the tax has been paid.

### **Sec. 31-155 Effective Date**

The effective date of this Ordinance shall be November 15, 2018. (Ord. 2018-37 9-17-18)

## **ARTICLE XII: MUNICIPAL CANNABIS RETAILERS' OCCUPATION TAX.**

### **Sec. 31- 156. Tax Imposed.**

- (a) A tax is hereby imposed in accordance with the provisions of Section 8-11-22 of the Illinois Municipal Code upon all persons engaged in the business of selling cannabis at retail in the City at the rate of 3% of the gross receipts from the sales made in the course of that business.
- (b) This tax does not apply to cannabis purchased under the Compassionate Use of Medical Cannabis Program Act.
- (c) This tax is in addition to all other taxes and fees imposed by the City of Kankakee and State of Illinois.

### **Sec. 31-157. Tax Collection.**

- (a) The tax imposed by this Ordinance and all civil penalties that may be assessed as an incident of the tax shall be collected and enforced by the Illinois Department of Revenue.

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- (b) Persons subject to any tax imposed under this Section may reimburse themselves for their seller's tax liability hereunder by separately stating that tax as an additional charge, which charge may be stated in combination, in a single amount, with any State tax that sellers are required to collect.

### **Sec. 31-158. Records.**

Every person who is subject to this tax shall keep and maintain accurate and complete documents, books, and records of each transaction or activity subject to this section, from start to complete, including all original source documents. All such books and records shall be kept by the owner and shall, at all reasonable times during normal business hours, be open to inspection, audit, or copying by the City's Cannabis Control Commissioner or his/her designee.

### **Sec. 31-159. Local Cannabis Permit**

If any holder of a City adult-use cannabis business permit fails to remain current in the payment of the tax imposed by this section, the City adult-use cannabis business permit may be suspended or revoked by the City Council until said tax is made current. No adult-use cannabis may be sold from said premises until the tax has been paid.

### **Sec. 31-160. Effective Date.**

This Ordinance shall be in full force and effect upon its passage, approval, and publication as provided by law, provided, however, that the tax provided for herein shall take effect for all sales on or after January 1, 2020. Copies of this Ordinance shall be certified and sent to the Illinois Department of Revenue prior to September 30, 2019. (Ord. 2019-54 9-27-19)

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